

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:OHI:CIN:TL-N-3549-99

JEKagy

date:

to: Chief, Examination Division, Ohio District
Attn: Barbara Wood

from: Assistant District Counsel, Ohio District

subject: [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This memorandum responds to your request, dated May 26, 1999, regarding a claim requesting interest on an overpayment attributable to a cash bond.

ISSUE:

Whether the Service is authorized to pay interest on the return of a remittance originally submitted in the nature of a cash bond, where the Service inadvertently failed to return the cash bond to the taxpayer for approximately one year after the satisfaction of the tax liability at issue.

CONCLUSION:

We have found no statutory authority which would permit the Service to pay interest on the return of a remittance, originally submitted in the nature of a cash bond, even where the Service inadvertently failed to return the cash bond to the taxpayer for approximately one year after the satisfaction of the tax liability at issue.

FACTS:

On [REDACTED], [REDACTED] (" [REDACTED] ") submitted a \$ [REDACTED] remittance, designated as a cash bond, to the Service regarding additional taxes for the [REDACTED] tax year. Apparently, [REDACTED] was in the process of negotiating the resolution of its [REDACTED] tax liability at the time of the remittance of the cash bond. On [REDACTED], additional tax and interest were assessed in the amounts of \$ [REDACTED] and \$ [REDACTED], respectively, which assessments were offset against the cash bond. An additional assessment of tax and interest apparently was made on [REDACTED] in the amount of \$ [REDACTED] and that assessment was also offset against the cash bond. For reasons not explained, the excess of the cash bond over the assessments was not refunded to [REDACTED] until [REDACTED], some [REDACTED] days after the date of the initial assessment and offset. On [REDACTED], the Service also abated the \$ [REDACTED] assessment. Interest was paid on neither the return of the cash bond nor the return of the abated tax and interest.

[REDACTED] has filed a claim requesting: (1) interest on the excess of the cash bond over the offset of the September assessment, which excess was held by the Service from the date of the September assessment until the return of the cash bond on [REDACTED]; and (2) interest on the \$ [REDACTED] portion of the cash bond offset against the [REDACTED] assessment, which assessment was abated in full on [REDACTED].

ANALYSIS:Preliminary Matter:

A deposit in the nature of a cash bond is not a payment of tax, is not subject to a claim for credit or refund and, if returned to the taxpayer, does not bear interest. Deposits in the nature of a cash bond are not made in satisfaction of a tax liability, but function merely to stop the running of interest. See Rev. Proc. 82-51, 1982-2 C.B. 839. Here, the taxpayer seeks to obtain the payment of interest on the excess of the cash bond

over the assessed tax and interest offset, which excess was held by the Service from [REDACTED] until its return to the taxpayer on [REDACTED].

Given [REDACTED]'s designation of the remittance as a cash bond, [REDACTED] apparently does not contest that the remittance was a deposit in the nature of a cash bond. Further, even if contested, the nature of the remittance seems correctly classified as a cash bond. IRM 4485.1(2) states that "[h]ow advance payments are classified depends upon whether the deficiency or additional tax due has already been ascertained." On that point, IRM 4485.1(3) explains that:

[P]ayments tendered before the deficiency may be assessed, e.g., unagreed cases, will be treated by the Service as a cash bond for the payment of taxes thereafter found to be due upon the receipt of an affirmative statement from the taxpayer acknowledging the conditions of acceptance.

Where, as in the present case, the advance payment precedes the Service's determination of a deficiency, the IRM mandates that advance payment be classified as a cash bond.

Rev. Proc. 84-58 also supports such a finding. In particular, section 4.02, entitled *Deposits in the nature of a cash bond*, at subpart 1, states in part:

A remittance made before the mailing of a notice of deficiency that is designated by the taxpayer in writing as a deposit in the nature of a cash bond will be treated as such by the Service.

We see little hazard on the classification issue.

Primary Issue:

The initial substantive issue raised is whether interest should be paid to [REDACTED] on the total excess of the cash bond over the September assessment which was offset against the cash bond. In the alternative, [REDACTED] seeks the payment of interest on the amount of the cash bond offset against the December assessment, which assessment was later abated in full by the Service.

Rev. Proc. 84-58 controls the initial issue. Section 4.02 (*Deposits in the nature of cash bond*), at subparts 2 and 3, discusses the offset of a cash bond following a completed examination. The concluding sentence of subpart 3 reads:

Any amount of the remittance that exceeds the proposed liability will continue to be considered a deposit and will be returned to the taxpayer without interest subject to the provisions of paragraph 1 of this section.

1984-2 C.B. 502 (emphasis added).

Moreover, section 5.04, entitled *Interest*, in addressing the payment of interest on deposits in the nature of cash bonds, states:

No interest will be allowed or paid on a deposit, or on any portion of a deposit, returned to a taxpayer before or after assessment.

1984-2 C.B. 503.

The unequivocal language of the revenue procedure quoted above clearly sets forth the Service's position on the payment of interest on deposits in the nature of cash bonds. We have found no authority, whether statutory, regulatory, or case law, which would permit the payment of interest on the return of a deposit in the nature of a cash bond, regardless of the amount of time the Service retained the bond.

Regardless of any apparent inequity involved in the instant case, there simply is no authority upon which you may rely which would permit the Service to pay interest on the return of a remittance, originally submitted in the nature of a cash bond, even where the Service inadvertently failed to return the cash bond to the taxpayer for a year or more after the satisfaction of the tax liability at issue.

Alternative Issue:

As an alternative argument, [REDACTED] seeks the payment of interest on the amount of the cash bond offset against the December assessment, which assessment was later abated in full by the Service. [REDACTED]'s alternative argument can be resolved favorably to the taxpayer. Section 4.02 of Rev. Proc. 84-58

permits the amount of a cash bond, which is offset by assessed tax, to be considered a payment of tax. In that regard, subpart 2 states:

[A]ny deposit will be applied against the assessed liability as a payment of tax as of the date the assessment was made.

1984-2 C.B. 502.

Because a deposit (in the nature of a cash bond), to the extent applied against an assessment of tax and interest, is considered as a "payment of tax", it is entitled to interest just like any other payment of tax. See Rev. Proc. 84-58, at section 4.03.

Consistent with the foregoing, IRM Handbook 121.1.4.9.2 provides an exception to the general rule regarding "no interest on cash bonds." According to the exception:

If an assessed amount was paid by a cash bond deposit and is later abated, in whole or in part, interest is allowed on the overpayment amount from the date the abated tax was originally assessed to the date of refund or offset.

The language of the revenue procedure, coupled with the clear example set forth in the above cited IRM Handbook, provide authority for the payment of interest on the portion of the instant cash bond which was offset by the [REDACTED] assessment of tax and interest, since the assessment was later abated in full on [REDACTED].

To conclude, we find no legal authority under which you could allow the taxpayer's claim for interest on the total portion of the cash bond in excess of the assessment of tax and interest which was offset. Nevertheless, the portion of the cash bond which was offset against the [REDACTED] assessment is considered a "payment of tax." Rev. Proc. 84-58. Because the assessment was abated, the portion of the cash bond which was offset against the [REDACTED] assessment is entitled to earn interest from the date of the assessment until the date of the refund. Rev. Proc. 84-58; IRM Handbook 121.1.4.9.2.

We hope the foregoing responds fully to your earlier questions, but if we can be of further assistance in this matter, please contact the undersigned at ext. 3211.

MATTHEW J. FRITZ
Assistant District Counsel

By: _____
JAMES E. KAGY
Special Litigation
Assistant